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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,161	12/21/2001	Clayton L. Robinson	Z1154/02118	8175
22884	7590	01/25/2006	EXAMINER	
MIDDLETON & REUTLINGER			HYLTON, ROBIN ANNETTE	
2500 BROWN & WILLIAMSON TOWER			ART UNIT	
LOUISVILLE, KY 40202			PAPER NUMBER	

3727

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/026,161	Applicant(s) ROBINSON ET AL.	
	Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11-21 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9, 11-21, 23 and 26-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 2-9,11-21,23, and 26-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for the new limitation of the "liner being a non-foamable material". While the specification lists several thermoplastic or thermoset materials usable for forming the liner, it also indicates the material may "include foaming agents" and does not specify a "non-foamable" material is used. Further, the last sentence sets forth variations of the preferred embodiment are possible.

2. Claims 2-9,11-21,23, and 26-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

It is unclear what is intended by "non-foamable material". Is the material not a foam? or does the material not foam?

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 4,23,26,28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ou-Yang (US 4,818,577) in view of Ou-Yang (US 4,935,273).

Ou-Yang ' 577 teaches the claimed closure and container except for the liner being of a non-foamable material.

See Figure 3 and column 3, lines 46-53 regarding the structure set forth in claims 26 and 28. See column 3, lines 38-40 regarding the at least one layer of bonding material in claims 4 and 31. See column 2, lines 29-33 regarding the material set forth in claim 23.

Ou-Yang '273 teaches a liner being of a foam or non-foamed polymeric material (col. 2, lines 59-62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a non-foamable material for the liner, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides alternative materials for the liner capable of the same function, but allowing for more variations in materials used.

5. Claims 2,3,29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Markovich et al. (US 5,723,507).

The background of the patent to Ou-Yang '577 states the closure liner is to be used in conditions wherein the temperature exceeds 150° F, but does not specifically set forth the desired temperature is 165° F. Additionally, Ou-Yang '577 is silent regarding the shore A hardness of the liner material. See column 3, lines 38-40 regarding the material set forth in claims 3 and 30.

Markovich teaches thermoplastic and thermoplastic rubber liners having a shore A hardness value of about 70.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further provide the closure with a liner having a melting point greater than about 265° F

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and a shore A hardness value of about 70. Doing so provides a closure capable of withstanding high temperatures in a retort process and which maintains a sufficient seal between the closure and container.

6. Claims 5-8 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Montgomery et al (US 5,009,323).

Ou-Yang '577 as modified teaches the claimed closure (and container) except for an essentially circular tamper-evident band depending from the closure skirt.

Montgomery teaches it is known to provide a closure with an essentially circular tamper-evident band depending from the closure skirt. Two types of bands are known wherein one comprises a continuous bead and one comprises flexible finger projections.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of Montgomery's essentially circular tamper-evident band depending from the closure skirt of Ou-Yang '577. Doing so is a known practice in the closure art to protect the contents of a sealed container and to alert the end user of possible tampering.

7. Claims 9 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Kelly (US 6,202,871).

Ou-Yang '577 as modified teaches the claimed closure (and container) except for at least one slit extending a predetermined length from the top to the skirt.

Kelly teaches it is known to provide a closure with various configurations of slits extending a predetermined length from the top to the skirt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of at least one slit extending a predetermined length from the

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top to the skirt of Ou-Yang '577. Doing so allows for air circulation, venting and/or washing of the sealed container.

8. Claims 11-16 and 27 are rejected under 35 U.S.C. 103(a) as obvious over Ou-Yang '577 in view of Ou-Yang '273.

Ou-Yang ' 577 teaches the claimed closure and container as noted. See Figure 3 and column 3, lines 46-53 regarding the structure set forth in claim 27. See column 2, lines 29-35 regarding the material set forth in claims 11 and 12. See column 3, lines 38-40 regarding the at least one layer of bonding material in claim 16.

Figures 2 and 3 appear to depict the closure threads having an upper edge wherein an angle Θ is defined between the upper edge and a horizontal plane, and the angle Θ is less than about 45° .

Wherein the thread of Ou-Yang '577 is not specifically taught to have an angle Θ less than about 45° , it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the thread with an angle defined between the upper edge and a horizontal plane of less than about 45° as it known in the art.

Regarding claims 13-15, Ou-Yang teaches the claimed closure and container except for the angle Θ being less than about 20° as in claim 13, or the angle Θ being about 20° as in claim 14, or the angle Θ being less than about 10° as in claim 15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the thread to have an angle Θ of any desired dimension including less than about 20° as in claim 13, or about 20° as in claim 14, or less than about 10° as in claim 15 for the desired engagement and slip resistance between the closure and container.

Additionally, Ou-Yang '577 teaches the claimed closure and container except for the liner being of a non-foamed material.

Ou-Yang '273 teaches a liner being a foam or non-foamed polymeric material (col. 2, lines 59-62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a non-foamable material for the liner, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides alternative materials for the liner capable of the same function, but allowing for more variations in materials used.

9. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 27 above, and further in view of Montgomery.

Ou-Yang '577 as modified teaches the claimed closure (and container) except for an essentially circular tamper-evident band depending from the closure skirt.

Montgomery teaches it is known to provide a closure with an essentially circular tamper-evident band depending from the closure skirt. Two types of bands are known wherein one comprises a continuous bead and one comprises flexible finger projections.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of Montgomery's essentially circular tamper-evident band depending from the closure skirt of Ou-Yang '577. Doing so is a known practice in the closure art to protect the contents of a sealed container and to alert the end user of possible tampering.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 27 above, and further in view of Kelly.

Ou-Yang '577 as modified teaches the claimed closure (and container) except for at least one slit extending a predetermined length from the top to the skirt.

Kelly teaches it is known to provide a closure with various configurations of slits extending a predetermined length from the top to the skirt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of at least one slit extending a predetermined length from the top to the skirt of Ou-Yang '577. Doing so allows for air circulation, venting and/or washing of the sealed container.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which

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require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

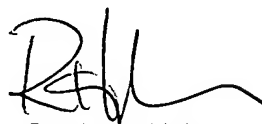
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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH

January 21, 2006

A handwritten signature in black ink, appearing to read 'R. Hylton', with a stylized flourish at the end.

Robin A. Hylton
Primary Examiner
GAU 3727